

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 42 Bridge Drive, Turnersville, NJ 08012
 Address of Defendant: 1400 Black Horse Hill Road, Coatesville, PA } 3900 Woodland Avenue
Phila. PA
 Place of Accident, Incident or Transaction: Coatesville VA Medical Center
 (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☐

unknown

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☒ Other Personal Injury (Please specify) medical malpractice
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Joseph Chaiken, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 6-3-10

Joseph Chaiken
Attorney-at-Law

31187
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6-3-10

[Signature]
Attorney-at-Law

31187
Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

The Estate of Micheal
Keating v.
Coatesville VA Medical Center,
et al.

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

6-3-10
Date

Joseph Chaiken
Attorney-at-law

Plaintiff
Attorney for

215 564 1800
Telephone

215 564 5524
FAX Number

jchaiken@jchaikenlaw.com
E-Mail Address

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Trenton, New Jersey
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Joseph Chaiken, Esquire | 1800 JFK Boulevard | 14th Floor,
Philadelphia, Pennsylvania 19103 | (215) 564-1800

DEFENDANTS

Coatesville VA Medical Center and The U.S. Department of
Veterans Affairs a/k/a The Veterans Administration

County of Residence of First Listed Defendant Coatesville, PA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input checked="" type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgement

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
medical malpractice

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/03/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The Estate of Michael Keating	:	
by Marie Keating, the Executrix of	:	
The Estate of Michael Keating,	:	
and Marie Keating in her own right, and	:	
as executrix of such estate, and Marie Keating	:	
for and on behalf of the heirs of the Estate	:	
of Michael Keating.	:	
42 Bridge Drive	:	
Turnersville, New Jersey 08012	:	
vs.	:	C.A. NO:
Coatesville VA Medical Center	:	
1400 Black Horse Hill Road	:	
Coatesville, Pennsylvania 19320-2096	:	
and	:	
The U.S. Department of Veterans Affairs	:	
Also known as The Veterans Administration	:	
3900 Woodland Avenue	:	
Philadelphia, Pennsylvania 19104	:	

Civil Action Complaint

1. Plaintiff Marie Keating is a citizen of the State of New Jersey residing therein at the address listed above. She is the duly appointed executrix of the estate of Michael Keating. She was the wife of Michael Keating during his lifetime.
2. Defendants are the Veterans Administration and the Veterans Administration Medical Center at Coatesville, Pennsylvania. [hereinafter collectively the VA]
3. This action is being brought pursuant to the Federal Tort Claims Act.
4. Standard Form (SF) 95 was sent to the VA in February 2009.
5. The VA has had 6 months to investigate this claim and to make a determination as to payment or not. The VA has not concluded its investigation. Plaintiff is therefore filing suit in this action.
6. Michael Keating [hereinafter MK] was a 56 year old male admitted to the Coatesville Medical Center for treatment of Post Traumatic Stress Disorder. He had a history of chronic obstructive pulmonary disease.

7. On June 5, 2008, MK was complaining of shortness of breath, was diaphoretic, status post four nebulizer treatments and given oxygen. He was taken to urgent care and described his breathing as pulling air through a straw.

8. On June 5, MK had shortness of breath/diaphoresis. Oxygen saturation was low and he was wheezing. He received oxygen, antibiotics and an injection of corticosteroids and more nebulized medicines. He was placed on high flow oxygen, but continued with wheezing and a low oxygen saturation on room air. He was given a diagnosis of exacerbation of COPD. He was discharged from the Urgent Care Center that afternoon, with a low room air oxygen saturation level upon return from the Urgent Care Center.

9. He was not properly and urgently attended to after returning to the area of the VA medical center that was 'non urgent' despite his continued complaints related to trouble breathing, and despite requests to call a code blue once he had returned .

10. On June 6 in the early morning MK was having trouble breathing, wheezing and a nebulizer was running. Code Blue was called, the patient became unresponsive and CPR was administered. The patient was not intubated. The patient was cyanotic. He received cardiac compressions and masked ventilation, and he was transferred to Brandywine Hospital.

11. At Brandywine, the patient was intubated, and placed on a mechanical ventilator. Pupils were fixed and dilated, and he had hypoxic encephalopathy. He had myoclonic seizures requiring treatment. He had shock liver, fevers and rhabdomyolysis. He had persistent respiratory failure, and fever, seizures and persistent encephalopathy. A tracheostomy was performed. He had decubitus disease, eventually being able to breathe on his own. He died on December 1, 2008, after spending months in a coma.

12. It is averred that the VA medical center acting through its agents, and employees acting within the course and scope of their agency, employment and authority were negligent, careless and breached the standards of care in inter alia:

- a. Sending him back from the acute urgent care center to a non medical facility/wing;
- b. Failing to monitor him and have him in an environment where he could be monitored appropriately;
- c. Failing to follow up on his complaints of difficulty in breathing;
- d. Failing to have proper equipment available;
- e. Failing to intubate him in a timely fashion;
- f. Failing to hospitalize the patient earlier;
- g. Failing to make certain he had a clear airway;

- h. Not recognizing he did not have a clear airway;
- i. Not recognizing the severity and acute nature of his respiratory distress;
- j. Not responding quickly enough to his calls for help and others calls for help;
- k. Not calling a code blue despite requests to do so
- l. Otherwise acting in a negligent, careless, reckless and inattentive manner.

13. Defendant was negligent and acted with malicious intent, reckless indifference, and acted willfully and wantonly in failing to call a code blue on the 6th despite requests to do so.

14. As a result of the negligence and willful, wanton, malicious, reckless conduct the plaintiff suffered from respiratory distress, respiratory failure, pain, suffering, severe emotional and mental distress, and subsequently brain damage, seizures, injury sickness and death. His estate has incurred medical bills and other expenses for his long treatment and care and for his burial and funeral expenses as well as other incidental expenses. His estate has lost his earnings and earning capacity that he would have had, had he not died from the defendants actions.

15. Plaintiffs claim damages for his wrongful death for each of his heirs, and for his pain and suffering, medical expenses, funeral expenses, his loss of earnings during his lifetime under applicable wrongful death and survival statutes..

16. Plaintiffs claim damages for Marie Keatings loss of consortium, and for the loss of the services, society and support he would have given to her as well as to the other heirs of the estate.

WHEREFORE, plaintiffs claim damages from the defendants in an amount sufficient to fully compensate them for all of their losses.

Joseph Chaiken & Associates

Joseph Chaiken

By: Joseph Chaiken, Esquire

VERIFICATION

The undersigned verifies that he is the attorney for plaintiff(s), Marie Keating in the within Civil Action Complaint; that he is familiar with the facts set forth in the foregoing and that same are true and correct to the best of his knowledge, information and belief and that he makes this statement subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Joseph Chaiken

Joseph Chaiken, Esquire

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Eastern District of Pennsylvania

The Estate of Michael Keating by Marie Keating, The
Executrix of the Estate of Michael Keating

Plaintiff

v.

Coatesville VA Medical Center and The U.S.
Department of Veterans Administration

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Coatesville VA Medical Center | 1400 Black Horse Hill Road | Coatesville, PA
19320

The U.S. Department of Veterans Affairs a/k/a The Veterans Administration
3900 Woodland Avenue | Philadelphia, PA 19104

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

JOSEPH CHAIKEN, ESQUIRE
JOSEPH CHAIKEN & ASSOCIATES, P.C.
1800 John F. Kennedy Boulevard - 14th Floor
Philadelphia, Pennsylvania 19103

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Michael E. Kunz
Clerk of Court

Date: 06/03/2010

Signature of Clerk or Deputy Clerk